IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2764 of 2006
With
SPECIAL CIVIL APPLICATION No. 2569 of 2006
With
SPECIAL CIVIL APPLICATION No. 2572 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRATAPJI NATHAJI THAKORE - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR KETAN I ACHARYA for Petitioner(s) : 1,
Mr M R Mengdey, Asstt.GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA
Date : 24/03/2006

ORAL (COMMON) JUDGMENT

All these petitions were stated to be making the common grievance and praying the same relief of directions to the respondent authority to immediately

regularize the services of the petitioners and place them in suitable pay scales with effect from the initial appointment and grant consequential benefits and backwages. The facts and annexures were duly elaborated and annexed only in Special Civil Application No.2764 of 2006 on the basis of which common arguments were advanced by the learned counsel Mr Dipak Dave appearing for Mr K I Acharya, learned Advocate for the petitioner.

2. It is generally the case of the petitioners that they have put in more than 20 years of service under the respondent as “Nakal Karkoon” and their services came to be abruptly ended towards the end of the year of 2004 after the last appointment for a period of 3 months. The last order of appointment dated 16.12.2004 at Annexure 'C' to the petition clearly stipulated that the petitioner in Special Civil Application No.2764 of 2006 was appointed for a period of three months ending on 31.12.2004 as non-salaried Copy Clerk subject to approval by the Collector and expressly on condition that it was not a permanent appointment and no wages or allowances were to be paid. According to the order dated 3.12.2004 the aforesaid appointment was cancelled on account of the appointment being not approved by the Collector.

Thereafter, the petitioners approached this Court by way of Special Civil Application No.16169 of 2004 and other allied matters and by order dated 14.3.2005 of this Court (Coram: Hon'ble Mr Justice Akil Kureshi) the petitions were disposed of with the observation and direction that the representation of the petitioners was still pending and, therefore, such representation should be disposed of by the competent authority as expeditiously as possible and preferably within a period of 3 months. Liberty was left to the petitioners to take such legal recourse as may be available to them as per the law, in case the view which might be taken by the Government was adverse to the petitioners. The petitioners appear to have made additional representation thereafter and decision of the Government based on directions of the Department of Revenue of the State Government was conveyed by letter dated 25.5.2005, according to which the request of the petitioner was declined. Thus, in short, the petitioners' so-called services were already terminated in the year 2004 and the representation in that regard, was turned down in May, 2005.

3. The basic question which arises for consideration in the facts of the present cases is about the nature of relationship between the petitioner and the respondent. It is an admitted fact that the petitioners have never been appointed as regular employees on a fixed salary or in a pay scale and there was no question of any process of selection or recruitment having been undergone at any stage. Therefore, the relationship clearly appears to have been a loose arrangement in which the petitioners were assigned certain work at the Collectorate or other offices of the Revenue Department and paid certain remuneration not on the basis of a contract **of** service but on the basis of a contract **for** service. Any regular appointment or regularization of such so-called services under the respondents, without there being any post and without any process of recruitment and selection, would *prima facie*, violate the letter and spirit of Articles 14 and 16 of the Constitution of India. Besides that, an allegedly very long period of services under the aforesaid loose arrangement, howsoever genuine it may appear, cannot confer any right and, if at all the petitioners considered themselves to be regular employees, it was too late in the day for them to demand regular employment towards the fag end of their careers.

4. Learned counsel Mr Dave vehemently argued that the detailed representation of the petitioners, backed by the above-mentioned order of this Court, was disposed of by an order in three lines without giving any reasons and without affording to the petitioners an opportunity of being heard. It is, however, not always necessary to afford an opportunity of being heard where a representation has to be decided and it is also not always necessary that the order must be a reasoned order and as elaborate as the representation since it is not an adjudication. It must be borne in mind that no employer including the Government can be directed to employ someone as an employee unless the legal right of the candidate for such employment is shown to have existed and violated. It is entirely a matter of policy of the employer and the authority concerned must be left to decide the strength and requirement of its staff. Mr Dave also submitted that in several other districts, similarly situated copy clerks were continued and allowed to work on the same basis. That however, is not a sufficient ground to direct the respondents to do the same thing in these cases.

5. Therefore, in the facts and circumstances summarised hereinabove, no legal right, much less a fundamental right has been shown to have been violated by the order dated 22.5.2005 impugned in Special Civil Application No.2764 of 2005 and all the petitions having been stated to be admittedly identical, they are dismissed *in limine.*

[D H Waghela, J.]

msp